

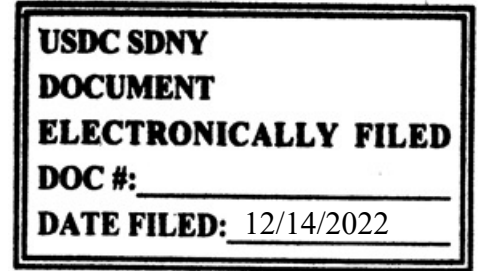
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**BY ECF**

December 6, 2022

Hon. Magistrate Judge Stewart D. Aaron  
United States District Court  
Southern District of New York  
Thurgood Marshall  
United States Courthouse  
New York, New York 10007



**Re:   *Cheng v. Zhang Medical P.C. et al*, No. 1:21-cv-06682-JGK**  
**Request for Follow Up Pre-Motion Discovery Conference and Imposition of**  
**Sanctions**

Magistrate Judge Aaron:

This firm represents Defendant PacGenomics.

PacGenomics seeks a discovery conference and hereby moves for sanctions regarding the failure of Defendants Zhang Medical, P.C. d/b/a New Hope Fertility Center, NHFC, Inc., Dr. John J. Zhang and Dr. Liu (the “Zhang Medical Defendants”) to respond to a set of limited interrogatories. It has been more than eighty (80) days since the interrogatories were propounded. Following a prior letter motion, this Court ordered that the Zhang Medical Defendants were to respond to such discovery by **November 30, 2022**, and they did not do so. Time is of the essence in obtaining answers in order that PacGenomics can obtain a voluntary dismissal in this action.

Upon being sued in this action, Defendant PacGenomics provided a declaration to Plaintiffs that it provided no testing or other services of any type to Plaintiffs relating to claims and allegations asserted in this case. At least as early as January 2022, Plaintiffs’ counsel took the position that they would not dismiss PacGenomics without written confirmation from the Zhang Medical Defendants that PacGenomics did not provide any testing or other services to the Plaintiffs. We reached out to counsel to the Zhang Medical Defendants on at least two occasions about having them, without the need for formal discovery, provide such declaration regarding PacGenomics’s non-involvement, but we were told that the Zhang Medical Defendants were not

inclined to do so although their counsel recognized that PacGenomics should be voluntarily dismissed.

Given (i) the protracted nature of this case including Plaintiffs' substantial delays in conducting discovery, (ii) the Court's order that it would not further extend PacGenomics's deadline to answer the Amended Complaint, and (iii) impending Court-ordered discovery deadlines, PacGenomics was compelled to serve formal discovery on the Zhang Medical Defendants to seek confirmation regarding its non-involvement with any of the claims and/or allegations that comprise the subject matter of this case. On September 14, 2022, PacGenomics served straightforward and limited Requests for Admissions and Interrogatories (the "Outstanding Discovery Requests") on the Zhang Medical Defendants.

The Requests for Admissions were never answered. Because more than thirty days have elapsed since the service of such requests, the Zhang Medical Defendants are deemed to have admitted that, among other things, PacGenomics did not provide testing and/or services of any type or kind, that are the subject of this action, directly or indirectly to Plaintiffs.

Responses to the eight (8) Interrogatories were due on October 14, 2022. No responses or objections were served, and no extension requested. On October 18, I sent Christopher Terzian, Esq., counsel for the Zhang Medical Defendants, an email following up on the Outstanding Discovery Requests and I included another copy of the requests. I received no response. On October 28, I sent Mr. Terzian a second email following up on such Outstanding Discovery Requests. I received no response. On November 3, I telephoned Mr. Terzian to meet and confer. When I complained about the lack of response, Mr. Terzian said that his clients would stipulate that PacGenomics be dismissed from the case. I explained again that Plaintiffs' counsel required written confirmation from the Zhang Medical Defendants that PacGenomics had no involvement in order to agree to a stipulation dismissing them from this action. Mr. Terzian advised me that he was busy with other cases. On November 4, 2022, I sent Mr. Terzian a letter seeking compliance with the Outstanding Discovery Requests, including the eight (8) interrogatories, by November 8, 2022. I received no response.

On November 16, 2022, PacGenomics filed a letter motion for a pre-motion conference. This Court ordered the Zhang Medical Defendants to respond to the Outstanding Discovery Requests and directed that they do so by **November 30, 2022**. See ECF No. 69. Such deadline came and went with no response. On Thursday, December 1, 2022, I emailed Mr. Terzian inquiring about the discovery, and I received no response. On Monday, December 5, 2022, I emailed Mr. Terzian again about the discovery. He responded that he would address the discovery, but we have not received responses and have not been notified of the date when compliance can be expected.

Because the Zhang Medical Defendants have not responded, we have been unable to obtain a voluntary dismissal of PacGenomics from this action. The current court deadline for PacGenomics's to answer the First Amended Complaint **expires on December 13, 2022**. The failure of the Zhang Medical Defendants to produce discovery by November 30, 2022 pursuant to this Court's order has necessitated that PacGenomics spend time and resources preparing and

applying for a further extension of their deadline to answer the complaint, which was filed today. *See* ECF No. 70. PacGenomics submits that, if the Zhang Medical Defendants respond to such discovery as previously ordered by the Court, it could obtain a voluntary dismissal and not need to answer such complaint.

PacGenomics seeks an award of sanctions in the form of: (i) payment of sanctions in the amount of \$100 per day from December 1, 2022 until the day that the Zhang Medical Defendants respond to the Outstanding Discovery Requests to be paid to the Court, and (ii) payment attorneys' fees of \$2,945.00 representing 6.2 hours at \$475.00 per hour spent by undersigned counsel between October 18, 2022 and today comprising: emails, phone call and letter, to counsel for the Zhang Medical Defendants in an attempt to obtain discovery responses after deadline passed, the November 16, 2022 letter motion for a pre-motion conference regarding discovery failure, the application for a further extension of PacGenomics' deadline to answer the First Amended Complaint and this letter motion, to be paid to Defendant PacGenomics.

Respectfully submitted,

A handwritten signature in blue ink that reads "Kerry A. Brennan". The signature is fluid and cursive, with the first name "Kerry" and last name "Brennan" clearly legible.

Kerry A. Brennan

ENDORSEMENT: Pending before the Court is Defendant PacGenomics' Letter Motion for Discovery and Sanctions against the Zhang Medical Defendants. To the extent that this Letter Motion seeks discovery, it is DENIED AS MOOT, since this action has been dismissed as against PacGenomics. To the extent that the Letter Motion seeks discovery sanctions against the Zhang Medical Defendants, it is DENIED in an exercise of the Court's discretion. SO ORDERED.

Dated: 12/14/2022

A handwritten signature in blue ink that reads "Stuart J. Aaron". The signature is cursive and somewhat stylized, with the first name "Stuart" and last name "Aaron" clearly legible.